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RECOGNISING PROSTITUTION AS A PROFESSION AND PROTECTING ITS DIGNITY UNDER ARTICLE 21 OF THE INDIAN CONSTITUTION

NIKITA AMBWANI[1] & RUPALI CHAUHAN[2]

ABSTRACT

In a culture where patriarchal traditions are strongly upheld, the question of whether or not sex work (including prostitution) should be recognized as a career remains contentious. Every time it's used, the phrase "prostitution" conjures up all the negative connotations that go along with it. Efforts to respect, protect, uphold, and promote the rights of sex workers must be based on their status as individuals and citizens with rights guaranteed by the Constitution, which has received increased attention in recent years due to a growing debate on the topic at both the international and domestic levels. The Supreme Court of India has also issued guidelines to help sex workers live with respect in the country. In the first section of this study, we see that prostitution has long been an integral part of Indian culture. After that, a discussion of the constitutional protections that safeguard the rights of sex workers is provided, and finally, the myths and realities that surround prostitution are discussed. Policymaking strategy recommendations are provided in the last section of the study report.

Key Words: article 21, the constitution of India, prostitution, supreme court, right to live with dignity.

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[1] Law Student, University Five Year Law College, University of Rajasthan, Jaipur.
[2] Law Student, University Five Year Law College, University of Rajasthan, Jaipur.

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I. INTRODUCTION

One of the world's oldest industries, prostitution has been around for a very long time. As early as Kautilya's Arthashastra, which detailed the conduct and lifestyle expectations of prostitutes, prostitution had become an established institution in India. The guidelines for customer behavior are also outlined in this paper.[3] Let's fast forward to the Middle Ages, where, with royal support, prostitution flourished as a legitimate occupation. Girls, women, and concubines who had previously sang, danced, and performed in the royal palaces of the Mughal Empire emerged in vast numbers into a society that could not provide for them economically. Because of this economic predicament, they reached a point of no financial stability. Due to a lack of alternatives, they engaged in this form of commercial sex trafficking. The lack of government oversight and control of this commercial enterprise, highlighted by corruption and exploitation of the weakest, meant that the women's situation did not improve even throughout British rule.[4] Due to their economic and social disadvantages, these ladies were easy prey for their exploiters. All of these indicators point to the pervasiveness and longevity of prostitution in Indian society, dating back to ancient times. Unfortunately, it is more commonly seen as a problem than a chance for individuals in poor areas to improve their financial situation.

Prostitution is defined by the Immoral Traffic (Prevention) Act of 1956. Prostitution, as defined by this definition, is the sexual exploitation or abuse of human beings for monetary gain.[5] Prostitution in India is an enormous industry that brings in an estimated Rs. 40,000 crores per year. Thirty percent of the world's sex workers are under the age of twenty-five, and the industry that exploits them is worth an estimated Rs. 11,000 crores.[6] There are roughly one lakh sex workers in Mumbai, out

[3] Rajni Bala, 'PROSTITUTION IN INDIA' (2016) 3 19.
[4] Biswanath Joardar, Prostitution in Historical and Modern Perspectives (Inter-India Publications 1984).
[5] Section 2(f), Immoral Traffic (Prevention) Act, 1956
[6] Dharmendra Chatur, 'Legalization of Prostitution in India' 21.

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of a total of 10 million sex workers in India. Mumbai is also frequently referred to as Asia's burgeoning metropolis of the sex industry. Also widely reported is the fact that India is home to roughly half a million child sex workers. Eighty percent or more of these child sex workers live and work in Bangalore.[7] When calculating the total population of those who engage in prostitution or commercial sex for financial support, these figures speak loudly. Because of this, the government must inevitably establish rules and regulations to monitor and control this line of work. Something worth noting, however, is that while prostitution is not outright banned in India, it is also not officially permitted in any public setting. Three branches of India's legal code address the topic of sexual labor. The Indian Penal Code from 1860, the Immoral Traffic (Prevention) Act from 1956, and the Constitution of India from 1950.

Under the Indian Constitution, prostitutes enjoy the same rights and responsibilities as any other citizen of the country since they are considered equal members of society. Therefore, sex workers are also granted the rights to equality guaranteed by Articles 14 through 18 of the Indian Constitution, the freedom of association guaranteed by Article 19, and the right to life and personal liberty guaranteed by Article 21. This guarantees that they are afforded the same rights as every other citizen and serves to forestall discrimination. Yet the Indian Constitution does more than just protect these rights; it also promises an end to human trafficking. Furthermore, forced labor is illegal under the Indian Constitution. Many Supreme Court rulings have upheld article 21 of the Indian Constitution as a guarantee of the right to a minimum standard of living. The right to a sufficient means of livelihood is also guaranteed in an equal manner to both men and women using the State policies[8] and its directions. This is assured under Part IV of the Constitution of India, i.e., directive principles of state policy. In P.N. Swamy, Labour Liberation Front, Mahaboobnagar v. Station House Officer, Hyderabad[9], the Andhra Pradesh High Court ruled that the following obligations from Part IV and their corresponding rights are

[7] 'Coalition Against Trafficking in Women [WorldCat Identities]' <http://worldcat.org/identities/lccn-no00102365/> accessed 15 August 2022.
[8] Article 39 (a), Constitution of India, 1950
[9] P.N.Swamy, Labour Liberation Front, Mahaboobnagar v. Station House Officer, Hyderabad 1998 (1) ALD 755

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granted to sex workers as a unified set. The State must focus its policies on ensuring that employees' health and strength are not exploited and that individuals are not coerced to work in jobs that are not appropriate for their strength and age out of need[10], that marginalized groups in society are safeguarded from social injustice and exploitation by promoting their educational and economic interests[11], the need to promote adherence to treaty commitments and international law[12], and obligation to promote the application of human rights norms[13]. These provisions attest to the fact that sex workers in India are afforded significant and necessary safeguards under the constitution of the country. However, when it comes to sex workers and their jobs, the truth paints a grim picture that contrasts sharply with the prevailing norms and assumptions. Because rights are not absolute, they are accompanied by constraints meant to protect the rights of others. The Immoral Traffic (Prevention) Act of 1956 also has provisions that make it illegal to engage in this line of work.

The right to life is, at its core, a human right of paramount significance. The preservation of conditions favorable to it is a top priority since it gives meaning to our very existence. Consequently, the Supreme Court of India has often emphasized that the "right to life" under article 21 of the constitution does not refer exclusively to animal existence, providing the fullest possible explanation of this provision. Following are the words of the Apex Court in the judgment of Francis Coralie v. Union Territory of Delhi[14]:-

> "The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing, and shelter over the head and facilities for reading writing, and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to necessities the necessities of life and

[10] Article 39 (e), Constitution of India, 1950.
[11] Article 46, Constitution of India, 1950
[12] Article 51, Constitution of India, 1950.
[13] Article 47, Constitution of India, 1950.
[14] Francis Coralie v. Union Territory of Delhi, 1981 AIR 746, 1981 SCR (2) 516

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> also the right to carry on functions and activities as constituting the bare minimum expression of the human self."

The Indian Constitution's Article 21 protects all individuals and professions, including sex workers and their children. This protection was recently upheld by the Supreme Court bench of Justices L Nageswara Rao, BR Gavai, and AS Bopanna in May 2022.[15] According to the court, article 21 of the Indian constitution guarantees every citizen the opportunity to lead a moral life. In 2011, the court-appointed a five-person panel led by senior advocate Pradip Ghosh to advise it on three issues: how to put an end to human trafficking; (ii) how to help sex workers who want to leave the industry get their lives back on track, or more specifically, their rehabilitation; and (iii) how to create the conditions necessary for the sex workers to live their livable wages. The Supreme Court commented on the following aspects of the directive and the panel's suggestions:

a) According to Section 357C of the Code of Criminal Procedure, 1973 read with "Guidelines and Protocols: Medico-Legal Care for or Survivor/Victims of Sexual Violence," Ministry of Health and Family Welfare, any sex worker who experiences sexual assault should be granted access to all services available to a survivor of sexual assault, including immediate medical assistance.
b) The State Governments may be required to order an audit of all ITPA Protective Homes to guarantee that cases of adult women being kept against their will are examined and authorized for release without undue delay.
c) As sex workers are also human beings with recognized rights, the police, and local authorities should be dealing with them in a manner that is not fierce and inhumane. All sex workers should be treated with respect by police, who should also refrain from verbal or physical abuse, using force against them, or forcing them to engage in any sexual activity.

[15] J Venkatesan, 'Sex Workers Entitled to a Life of Dignity: Supreme Court' The Hindu (New Delhi:, 14 February 2011) <https://www.thehindu.com/news/national/Sex-workers-entitled-to-a-life-of-dignity-Supreme-Court/article15444256.ece> accessed 15 August 2022.

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d) While sex workers are being rescued, arrested, or raided under different operations, it should be the duty of the Press Council of India to issue guidelines that are appropriate in this respect so that the identities of such sex workers shall not be revealed.
e) The National Legal Services Authority, the State Legal Services Authority, and the District Legal Services Authority should host workshops on the legitimacy of sex work, the functions and responsibilities of law enforcement, and the boundaries between what is legally allowable and what is expressly prohibited.

These standards and regulations were generally well-received by members of the industry, and they have the potential to greatly improve the lives of sex workers, who frequently face the double whammy of exploitation from the authorities and the general public. [16]

II. DEFYING STEREOTYPES AND DICHOTOMIES PRESENT

The freedom to live a life free from want or shame is, as was said before, crucial to our very survival as a species. Depriving people of the means to get an education, health care, or a fair legal system is also a form of infringement on their rights to a decent existence. These offenses do not discriminate based on gender or target any one group more severely than others. The sex work industry as a whole is plagued by such abuses daily. Thus, it becomes vital for the government and the general public to observe, confront, and reject stereotypes. The strategy taken by Indian policymakers has contradictory aims. While fair in that it recognizes that the sex trade is exploitative and that the rights of sex workers must be protected, it does little to clear things up by limiting sex work to the privacy of individuals' homes, where it can be done without fear of repercussion from the law or the scrutiny of the general public. Prostitution regulations have been crafted with consideration for the perspectives of a wide range of people. The Immoral Traffic (Prevention) Act, 1956, which regulates and deals with

[16] Budhadev Karmaskar v. The State of West Bengal & Ors., Criminal Appeal (SC) No. 135 OF 2010; Sohini Chowdhury, 'Supreme Court Directs UIDAI To Issue Aadhaar Cards To Sex Workers Without Insisting On Proof Of Residence' (25 May 2022) <https://www.livelaw.in/top-stories/supreme-court-sex-workers-uidai-issue-aadhar-card-confidentiality-200026> accessed 15 August 2022.

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prostitution, is ambiguous on the legal status of sex work despite including penalties like severance against brothel owners and rehabilitation of sex workers. Whenever the rights of sex workers are discussed, it is often noted that they have a hard time obtaining basic identification documents like ration cards and voter registration cards. It was observed that the sex workers lacked access to state-sponsored rehabilitation programs and credit facilities due to their incapacity to open bank accounts without the required documentation.[17]

Owing to this, the widespread belief that people who work in the sex industry are forced or abused into their jobs is a myth that can be disproved. However, the fact that these employees are choosing to have sex for their reasons is often ignored. Following are the findings of a study[18] that presents how the stereotypes cannot be prophesying reality-

a) Sex workers understood that sex work was merely a different manifestation of this process of social exchange and that other types of work may also be exploitative. Women preferred to work in sex because it gave them more choice over their employment and their bodies despite being cognizant of the underlying injustices of gender and class. Contrary to the stereotype that only depicts sex workers as victims, these individuals actively participate in the industry and choose to choose this line of work over others.
b) According to the findings of this research, sex workers don't always live alone and frequently have many identities, including those of mothers, brothers, sisters, and fathers, contradicting the stereotype that only single women constitute the sex worker population. Many sex workers in studies C and D of this research show that demographics of male and gender nonconforming sex workers were spouses to cisgender women and fathers of numerous children. Several of these respondents were supported by their income by dependents. Many participants mentioned that they had been the only ones responsible for

[17] Budhadev Karmaskar v. The State of West Bengal & Ors., Criminal Appeal (SC) No. 135 OF 2010.
[18] Sameena Azhar and others, 'Diversity in Sex Work in India: Challenging Stereotypes Regarding Sex Workers' (2020) 24 Sexuality & Culture.

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caring for their elderly parents. Other participants helped younger family members, including nephews and nieces, who were unemployed financially.

Regardless of the existence of safeguards and legislation for the rights of sex workers, the dearth of proper implementation leads to several violations. Studies have found that the authorities responsible to enforce these legislations often exploit these sex workers due to which access to justice mechanisms becomes a far-sighted utopian dream. Sex workers view police enforcement as the most oppressive governmental organization. They frequently utilize explicit sexual language and innuendo to verbally harass sex workers. Police torture, sexually attack, and illegally detain sex workers while holding them.[19] Sex workers have been harassed and arrested under the terms of the Immoral Traffic (Prevention) Act of 1956, regardless of whether they are performing the profession willingly or under coercion. The inadequateness of the rehabilitation houses established by the Immoral Traffic (Prevention) Act of 1956 is a further issue that sex workers encounter. These reformative houses reportedly lack enough housing options, which causes them to be always overcrowded.[20]

III. CONCLUSION AND SUGGESTIONS

If prostitution is only looked at negatively while paralleling victimization with coercion, seldom can the perspective change to make room for validation and recognition of voluntary engagement in sex work. For the recognition of sex work as dignified prostitution, it is imperative for us as a society to sensitize ourselves to ground realities and overcome the conventional barriers both mental and institutional. As previously noted, due to the shortcomings in the implementation of the provisions of the Immoral Traffic (Prevention) Act, 1956, the plight of the sex workers goes unheard and unnoticed. To quote the words of Justice Ramaswamy: "women found in flesh trade should be viewed more as victims of socio-economic circumstances

[19] Aarthi Pai , Meena Seshu , Manisha Gupte VAMP, "Review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes sex work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers" (April, 2014).

[20] Sankar Sen, 'A Report on Trafficking in Women and Children in India 2002-2003' 455.

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and not offenders of the society, some police authorities have already set out the process of sensitization towards the sex workers and their treatment."[21]

When it comes to the legalization of prostitution as a profession, lawmakers must first ensure that these sex workers have all of the essential human rights provided by international laws in their domestic country. Suitable and appropriate rehabilitation and training should be provided to them so that they get an opportunity to further enhance their social position. Jobs and employment opportunities with a better wage that ensure a fixed income should be provided to these sex workers while also making certain that the work environment is amicable. In a study of 37 sex workers in Kolkata, India, disempowerment, limited personal choice, economic uncertainty, family poverty, the loss of a male breadwinner, and, on rare occasions, aggressive or manipulative attempts into sex work were developmental concepts from interviews about reasons for entering the industry.[22] Policies that are solely focused on rehabilitating and rescuing sex workers or that are centered on the premise that sex work is equated with immorality can hardly achieve any success in ensuring the protection of the rights of the sex workers and further, leading a dignified life. A substitute model of approach in this sense could be involving NGOs and sex worker representatives while formulating policies that recognize and uphold these rights, and that aim to do away with the stigma attached to sex work as a profession.

[21] Gaurav Jain v. Union of India and others AIR 1997 SC 3021 (K. Ramaswamy J.,).
[22] Swendeman, D., Fehrenbacher, A. E., Ali, S., George, S., Mindry, D., Collins, M., et al. "WHAT-EVER I HAVE, I HAVE MADE BY COMING INTO THIS PROFESSION": (2015) 44 (4).

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